



March 1, 1999

Ms. Linda Wiegman, Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-0604

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122485.

The Texas Department of Health (the “department”) received a request for information regarding Medina County End Stage Renal Disease Facility of Hondo, Texas. You contend that the submitted documents are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 251.015 of the Health and Safety Code, section 5.08 of article 4495b of Vernon’s Texas Civil Statutes, and the common-law right to privacy. We have considered the exception you claim and have reviewed the documents at issue.

You note that the department did not seek an open records decision from this office within the statutory ten-day deadline. *See* Gov’t Code § 552.301. The department’s delay in this matter results in the presumption that the requested information is public. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 generally constitutes a compelling reason.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You contend that the submitted documents are confidential pursuant to section 251.015(c) of the Health and Safety Code, and are, therefore, excepted from disclosure under section 552.101. Chapter 251 of the

Health and Safety Code provides for the licensing and regulation of end stage renal disease facilities. You state that the department licenses the facility about which the requestor is seeking information.

Section 251.015 of the Health and Safety Code provides as follows:

(a) A medical review board shall advise the board on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the [Texas Department of Health] with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning the quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Section 251.061(g) of the Health and Safety Code provides in part:

(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

The submitted documents include a recommendation from the medical review board, and information that the department compiled during a licensing survey. The medical review board's recommendation and the information the department compiled during the licensing

survey are confidential under section 251.015(c) and must be withheld from disclosure under section 552.101.<sup>1</sup> One of the submitted documents, which we have marked with a green tag, appears to be a corrective action plan. If this document is a corrective action plan, then section 251.061(g) excludes it from the coverage of the confidentiality provision in section 251.015(c) and the department must release it to the requestor. If this document is not a corrective action plan, then it is confidential under section 251.015(c) and must be withheld from disclosure under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref:: ID# 122485

Enclosures: Submitted documents

cc: Ms. Jann Evans  
305 Lisa Drive  
Austin, Texas 78733  
(w/o enclosures)

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<sup>1</sup>We note that your other arguments against disclosure were limited to information obtained during the licensing survey. Since we conclude that this information is confidential under section 251.015(c), we do not address your other arguments against disclosure.